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A truckload of debt

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Amilita Opie, who lives in the central part of Virginia in Buckingham, didn't have enough money for bills and food in June 2005. So she went to Loan Max to risk her 1993 Ford Explorer in return for an $800 loan.

By September, she couldn't pay her $1,463 debt and her car was repossessed and sold. She still owes another $413.

Janet Ruiz of Harrisonburg, Va., borrowed $2,950 from Loan Max in February 2005. She too fell behind and owed more than $12,500 by the end of the year. By April 2006, she still had her car, but the debt hit $16,000.

"She had a family member with medical problems and was in dire straits," said Grant Penrod, an attorney with Blue Ridge Legal Services who represents Ruiz.

Both women are suing the company, claiming it violated state and federal lending laws. The lawsuits threaten the business model of car title loan companies like Loan Max, which has two locations in Newport News and is unregulated because of a loophole in state financial laws.

"We're all very interested to see what the courts decide," said Joe Face, who heads the financial division of the State Corporation Commission. "That will probably set some kind of precedent."

Advocates for the poor have pushed the lawsuits in an effort to do what Virginia's legislature won't do on its own - halt a business that critics call predatory. Lawmakers' attempts at regulating car title lenders this year were rebuffed as Loan Max contributed more money than any other financial business in Virginia in 2006.

Georgia-based Loan Max is owned by Rod Ayrod and his company called Anderson Financial Services. The company wasn't aware of the lawsuits until Thursday.

"We are in full compliance with state and federal law, and that's how we operate," said Carrie Cantrell, spokeswoman for Anderson.

Car-title lenders followed payday lenders, which offer one-time high-interest loans, into the state in the past couple of years. Car-title lenders are unregulated because they claim they offer open-ended credit, like a credit card company.

Virginia is one of at least three states - including Iowa and Kansas - that has attracted car-title lenders by abolishing interest limits for credit cards. The car-title lenders are following the same pattern that payday lenders did, said Jay Speer, an attorney with the Virginia Poverty Law Center in Richmond.

Payday lending grew slowly on the fringes of the state financial system because of a loophole. The legislature had to decide what to do, and it legitimized the practice in 2002 as the payday lenders lobbied to regulate their business and make it mainstream. Now there are 750 payday lenders, with a heavy concentration in Hampton Roads.

"As soon as they did it, it exploded," said Speer. "That's exactly what the car-title lenders are doing."

Payday lenders are tracked by state regulators, but they don't know how many car-title loan companies are in the state. An online phone directory lists 26 Loan Max locations statewide. Fast Auto & Payday Loans, which has two locations in Newport News and two in Hampton, has 39 listings in Virginia - 16 in Hampton Roads.

THE LEGAL CHALLENGE

Both women filing the lawsuits were charged 30 percent interest a month, which works out to 360 percent a year.

"Even the worst, bottom-of-the-barrel credit card is going to have a 36.99 percent interest rate, and it's 10 times that," said Penrod. "It grows by leaps and bounds."

Both lawsuits focus on a one-time fee of 25 percent of the loan, which was $200 for Opie and $737.50 for Ruiz. These charges immediately added to the principal loan for both women. The 25 percent charge paved the way for claims that the company is violating state and federal law.

The charge was only disclosed on the loan document in small type as a one-time fee, without explaining the amount or purpose. The top of the agreement shows the interest rate and a $5 fee. The lawsuits say federal law requires this fee to be disclosed clearly at the top with the other fees.

Both lawsuits use different arguments to say Loan Max can not claim it is governed by the state credit card laws. Those laws require firms to offer a 25-day grace period before they apply finance charges. Because Loan Max applies that 25 percent charge immediately, it can not claim to be operating under the credit card laws, says the Opie lawsuit. Therefore, the company is subject to the state Consumer Finance Act.

Any companies subject to the act can only charge 36 percent interest a year on loans less than $2,500. They must also register with state regulators and adhere to restrictions on how they loan money.

The Ruiz lawsuit takes another route, claiming car-title loans do not fit the definition of an open-ended loan. They are a one-time loan, says the lawsuit, and the attempt to dress them as open-ended is a pretense and violation of state law.

Penrod said Ruiz wanted a one-time loan. She asked a lot of questions and believed that's what she was receiving. The agreement does allow her to pay it off and use more credit, like a credit card, but that wasn't what she thought she was getting.

"It's almost a bait and switch," said Penrod.

The State Corporation Commission doesn't require car-title lenders to register with the state. But the lawsuits assert that the car-title lenders are not offering open credit and could be regulated like other financial institutions.

Face said the commission can change its mind if it sees evidence it is not interpreting the law correctly. That would happen in consultation with the attorney general if the lawsuits raise enough evidence to warrant another look.

"Until the courts or the General Assembly decide something, it's an unregulated business," said Face.

POLITICAL CHALLENGE

Del. Harvey Morgan, R-Middlesex, has said he wants to change the law used by car-title lenders, which allows any interest rate a borrower and lender agree to. Morgan introduced a bill this year that would have capped the annual interest rate at 36 percent.

But the bill was carried over until 2007 by a House Commerce and Labor subcommittee.

Two other bills also carried over that would have brought the industry under some form of regulation, but still allow them to charge triple-digit interest rates.

Loan Max donated heavily to the governor and the attorney general, who is in charge of investigating companies that violate consumer laws in the state. Republican Attorney General Bob McDonnell has received $12,015 from Loan Max in the past three years.

McDonnell spokesman David Clementson said the attorney general will comply with whatever actions the General Assembly takes. But the state's top lawyer did not take a position on what type of regulation should be imposed.

"We will continue to monitor these actions in our role as Virginia's consumer counsel," Clementson said in a written statement, "as we continue to safeguard consumers from predatory lending practices which are not consistent with the free market."

As Loan Max was growing in Virginia in 2004 and 2005, it donated just under $50,000 to Jerry Kilgore for his gubernatorial bid. At the time, Kilgore still was the attorney general and in charge of protecting consumers.

After Kilgore lost to Democrat Gov. Timothy M. Kaine, Loan Max contributed $10,000 for the inauguration. In total, Loan Max gave Kaine $13,500 in the past three years.

Kaine spokesman Kevin Hall said the governor wished the legislature hadn't allowed the payday lenders and car-title loan companies to charge the interest rates they do. Kaine is particularly concerned about the loans' impact on members of the military in Hampton Roads.

"He would be willing to work with the legislature to address these concerns and provide more protection for consumers," said Hall.

Of the three car-title loan bills submitted this year, one bill would have lightly regulated the industry, but it left the companies to charge whatever interest rates they wanted. That bill was carried by Terry Kilgore, R-Scott, Jerry Kilgore's twin brother.

"Kilgore's bill is the industry bill," said Speer.

Cantrell said Loan Max did support the Kilgore bill.

"It will enable us to continue to provide a service to our customers to fill their short-term financial gap," said Cantrell.

When Jerry Kilgore left his post as attorney general, he went to work for Williams Mullen law firm, where he represents corporations against attorney generals. His spokeswoman as attorney general and policy director as he ran for governor was Cantrell, who is now the Loan Max spokeswoman in Virginia.

The Virginia debate this year was playing out at the same time in Iowa, where both the attorney general and governor pushed to reform the car-title loan business. A bill to limit the interest rates in Iowa passed the Senate overwhelmingly, but got stuck in the House.

"We could not even get it debated in the House," said Bob Brammer, spokesman for the Iowa attorney general. "It was a very major frustration, and we'll be back. It's one of our top priorities."